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Inside

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Sales Tax Sharing Will Be Dropped in Legislature

But Fiscal Restructuring Efforts Abound in Sacramento

By
William Fulton

A controversial sales-tax-sharing bill has been withdrawn by Assemblywoman Valerie Brown, D-Sonoma. The move indicates that a broader discussion is emerging about how to restructure the state-local financial relationship in California. Like Brown's bill, such a restructuring could have profound implications for local land-use planning around the state.

Brown agreed to send AB 3505 to an interim hearing at the Assembly Local Government Committee on April 20, when it became clear that she did not have enough votes to pass the committee. She indicated, however, that she would not surrender on the sales-tax issues.

Several Sacramento insiders said Brown's bill ran into opposition because it conflicted with attempts in the capital to deal with the fiscal restructuring issue more broadly. "One of the reasons a lot of people opposed this is that it was one more piecemeal solution," said Carol Whiteside, director of intergovernmental relations for Gov. Pete Wilson.

Several restructuring brainstorming sessions are taking place in Sacramento right now. Brown herself chairs an Assembly select committee on restructuring. Wilson has labeled his 1994-95 proposed budget a "restructuring," because it calls for profound changes in the revenue relationship between the state and counties. A task force of the League of California Cities is looking at issues surrounding the state-local fiscal relationship, including land use.

Similar issues may come up before the new Constitutional Revision Commission, which was established by state legislation last year. Wilson recently appointed veteran Sacramento insider William Hauck, his former deputy chief of staff, to chair the commission.

Furthermore, the issue may take on more urgency because counties are losing their legal challenge to the state's shift of property tax away from local *Continued on page 10*

Riordan Proposes Reorganization of L.A. Redevelopment

Housing, CD Functions Would Be Combined

By
Morris Newman

The future of the state's largest redevelopment agency seems threatened by Los Angeles Mayor Richard Riordan's proposal to create a new Citywide Development Agency that includes housing and community development. While Riordan administration officials are trying to downplay the growing perception that the Los Angeles Community Redevelopment Agency has been killed, the mayor's emphasis on economic development and job creation seems to foreshadow a back-seat role, at best, to the real estate-oriented projects.

The reorganization plan was unveiled in late April as part of Riordan's $4.3 billion budget proposal. Under the plan, the CRA would be combined with the city Housing Department and certain functions from the Community Development Department and the Department of Public Works. The redevelopment and housing commissions would be replaced by a new Community Development Commission. The L.A. City Planning Department is unaffected by the proposal. The plan still must be approved by L.A.'s powerful city council.

William Ouchi, a UCLA business professor and special advisor to Riordan who is the architect of the "streamlining" of city agencies, said the realignment is analogous to the restructuring of corporations. The city hopes to save $1.2 million through the redevelopment housing realignment.

Redundancy indeed exists in the housing arena, where three separate departments — the CRA, Housing and Community Development Department — pursue separate activities. "It's like we're running two separate companies," said CRA Board Chair Stanley Hirch, referring to his agency and the Housing Department.

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Local Planning

William Fulton

Huge Stanislaus Project Searches for Water

Six months after its approval, a 30,000-acre resort in the western foothills of Stanislaus County has begun construction, but it's still generating controversy.

Grading has begun on the first golf course in the Diablo Grande project. But local environmentalists are suing on a variety of grounds and a trial is scheduled to begin in late May. Meanwhile, the developers still must find a permanent source of water for the project.

Envisioned as a high-end resort and second-home development, Diablo Grande is backed by Irish pharmaceuticals magnate Donald Panoz, Wall Street investment banker J. Morton Davis, and local rancher Heber Perrett. Panoz and Davis have already built a similar project outside Atlanta. Modesto lawyer Russell Newman, who is representing the developers, said "there is no equivalent of what we are doing anywhere in the region."

The project was approved last fall by the Stanislaus County Board of Supervisors after local farmers agreed to a tricky deal on the question of water. Though Diablo Grande does not sit on prime farmland, the developers purchased some agricultural land on the valley floor in order to secure rights to the groundwater, which they could use for the resort project.

That move set off alarm bells at the Stanislaus County Farm Bureau, which feared that Diablo Grande could cause an overdraft problem for other farmers. "After five years, they could establish a proscriptive right and suck the basin dry," said the Farm Bureau's Jan Ennengay.

The issue became tricky for the farm bureau because the project does conform in many ways to the county's agricultural element. In the late '80s, the county considered a strategic plan that would have targeted commuter-style development in the foothills west of Interstate 5 as a means of reducing commuting to the Bay Area and protected agricultural land on the valley floor. However, the water issue proved almost insurmountable.

Eventually, the county approved an agricultural element designed to protect the county's most productive agricultural land, but did not tie that policy together with encouraging development in the western foothills. (*CP&DR*, June 1992.)

Even though Diablo Grande appears to protect prime agricultural land, Ennengay noted, a high-end resort development is not likely to relieve pressure to construct starter homes on the valley floor.

While endorsing the entire project in concept last fall, the supervisors gave rezoning approval to the first phase — but conditioned that approval on finding a permanent source of water within five years. The Local Agency Formation Commission has also approved creation of a separate water district for Diablo Grande.

Since the project's approval, Stanislaus County has been rife with rumors that Diablo Grande's developers have secured water rights elsewhere in the Central Valley and are negotiating some kind of water transfer with the Metropolitan Water District of Southern California. (Such a deal would permit Diablo Grande to tap the California Aqueduct, which runs close to the property.)

Newman said his clients are close to a water deal but won't say with whom. And Met spokesman Bob Gomperz said the agency had only one conversation with the developers, more than a year ago.

The project may be affected by a bill pending in the state legislature that would require the land-use element in the general plan to identify the likely water supplier for large projects, and then refer the general plan to that water supplier for review. The bill, AB 2673 (Cortese), was introduced in response to a fight between Contra Costa County and the East Bay Municipal Utility District over water service to the huge Dougherty Valley development near San Ramon. The bill passed the Assembly Local Government Committee on April 13.

The county and the developers were sued by Stanislaus Natural Heritage Project, a local environmental group, which claimed deficiencies in the county's environmental review process, problems under the Williamson Act and the county's general plan, and conflicts with the Endangered Species Act. (Much of the area is habitat for the endangered kit fox.) Stanislaus Natural Heritage was later joined in the suit by the Sierra Club and Ecology Action.

The county and the developers are currently seeking to dismiss the endangered species claims and remove the Sierra Club and Ecology Action as plaintiffs. The case is *Stanislaus Natural Heritage Project v. County of Stanislaus*, Stanislaus County Superior Court No. 301417.

■ Contacts:

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Jan Ennengay, Stanislaus County Farm Bureau, (209) 522-7278.

Mendocino County Rejects Resort

A controversial small resort proposal near Mendocino has died — at least for the moment — because the Board of Supervisors declined to certify the environmental impact report.

Landowner Tom Kravis had proposed 33 cabins, 36 campground spaces, a bed-and-breakfast inn, and a meeting and dining hall on 35 blufftop acres just south of the community of Mendocino. The project generated intense opposition from people in the Mendocino area, who said it would destroy local views of the ocean and create traffic congestion in the area.

Kravis, a San Diego surgeon, received permission from the Mendocino County Planning Commission in 1991 for a 48-cabin resort, but no EIR was prepared on the project. The Board of Supervisors later ordered an EIR, which called for a reduction in the project from 48 to 33 units. The planning commission then approved the revised project in November, but neighbors appealed to the Board of Supervisors.

Shorts

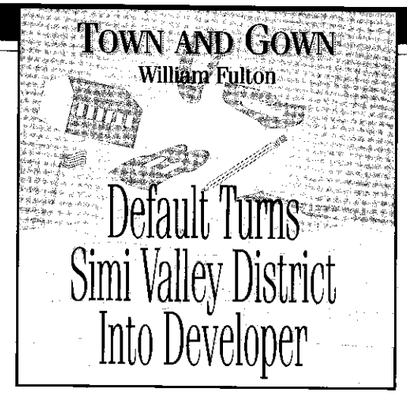
Dana Point approved the controversial Headlands project in early April even though the U.S. Fish & Wildlife Service has proposed a special rule to protect the California Pocket Mouse, which was found recently on the property. (*CP&DR*, March 1994)....

The City of Gilroy has rejected a proposed shopping center at the entrance to the city on Highway 152, considered Gilroy's "gateway" to neighboring wine country. The prime tenant in the 12-acre shopping center would have been Nob Hill Foods. Now Gilroy must consider the broader question of whether and how to develop a 321-acre area in the vicinity....

The 40-year-old McDonald's hamburger stand in Downey — which has been the subject of many historic preservation efforts in recent years — may not be saved. McDonald's Corp. has allowed the lease on the property to expire. But the property's owner, Pep Boys, said the building will not be razed immediately. ❑

Town and Gown

William Fulton



Default Turns Simi Valley District Into Developer

It's a situation any California developer can sympathize with: You're sitting on 1,800 acres of land in a planned community with entitlements for 600 houses. It's potentially valuable in the long run, but you need the cash now. Do you sell quickly and bank some profits — or do you hang in there and develop the property as the real estate market comes back, reaping potentially much higher profits?

In this case, the landowner isn't a developer, a rancher, or even a bank. It's the Simi Valley Unified School District, which took title in January to 1,800 acres of the Wood Ranch planned community as part of a "workout" with the troubled developer of the project, Olympia/Roberts Inc. In April, the district's staff recommended searching for a buyer willing to pay $12 million or more for the property. "But the board decided they wanted to investigate other options," says Superintendent Mary Beth Wolford. Now the district is searching for a consultant to look at possible alternatives to selling all the land now, including a joint venture with a developer, selling and/or developing the property in phases, or borrowing against the land's value to build a school now.

Wood Ranch is a 3,000-acre master-planned community near the Ronald Reagan Presidential Library in Simi Valley. Olympia/Roberts Inc. — a development partnership between developer Robert Levenstein and the Canadian real estate giant Olympia & York — had been developing the property under a 1982 development agreement and specific plan. Olympia/Roberts also had a separate agreement with the school district, in which the developer agreed to donate land for an elementary school in Wood Ranch and contribute $6 million toward its construction; in return, Olympia/Roberts did not pay any development fees to the school district under the School Facilities Act.

Olympia/Roberts donated the school land in 1989 as planned. Three years later, however, O&Y ran into financial trouble worldwide. As a result, Olympia/Roberts defaulted on a $15 million loan with Wells Fargo, a $250,000 payment to the city for road improvements required under the development agreement, and its promise to pay for the elementary school.

Thus began an 18-month negotiation process among the developer, Wells Fargo, the city, and the school district. In the end, the school district took the 1,800 acres of land — and, as the landowner, accepted a new development agreement extending to 2007.

Turning the land over to a government agency as the result of a default isn't unusual — but usually the agency that winds up with the land is the local city or county, not the school district. Simi Valley planner Laura Kuhn said the city would have considered taking ownership of the property as part of the workout but the developer never offered it, instead using the land to solve the problem with the school district. In any event, Kuhn said, the city's priority was renegotiating the development agreement on workable terms. "We have an interest in making sure the project gets built as contemplated under the specific plan," she said.

The city did obtain two large hillside lots from the developer as part of the workout. In extending the development agreement for 10 years, the city also agreed to continue to exempt Wood Ranch from Simi Valley's permit allocation system until 2007.

As Wood Ranch's new "developer," at least temporarily, the school district agreed to several additional financial obligations under the development agreement. Among other things, Wood Ranch will be obligated to pay fees of $6,000 per housing unit into a citywide public facilities fund. However, these fees are due only when the houses are built. The city also agreed to defer the defaulted $250,000 road fee, as well as other fees required under the original development agreement, until 1998.

After taking title to the property, the school district appeared ready to try to sell the land for at least $12 million. At a board meeting in April, however, neighboring landowners and board members asked for a postponement, saying the land might be worth far more than $12 million and selling it at a fire-sale price might reduce property values throughout the upscale development.

As a result, the board postponed its decision to sell and asked Wolford to find a real estate or financial consultant who could analyze other options for dealing with the property. Wolford said the school district does not need the Wood Ranch elementary school immediately, partly because the development has not been built as fast as originally scheduled.

■ Contacts:

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EPA Cites San Diego School District

The U.S. Environmental Protection Agency has filed an enforcement action against the San Diego Unified School District for allegedly building a school on property that contained a half-acre of vernal pool wetlands, as well as habitat for the endangered San Diego Mesa mint.

The EPA also ordered the City of San Diego to restore vernal pools destroyed by a recycling company which constructed a building on land leased from the city.

According to the EPA, the San Diego Unified School District constructed Challenger Junior High School on top of about 10 vernal pools in the Mira Mesa area. Rob Leidy, wetlands manager for the EPA's regional office in San Francisco, said that EPA and other agencies, such as the California Department of Fish & Game, had been working with the school district to resolve the issue but a mitigation plan "was not forthcoming in a timely manner."

Leidy criticized the school district's initial study under the California Environmental Quality Act, which he says did not turn up the vernal pool issue even though the site was contained on several local wetlands maps. EPA is asking for a two-to-one mitigation of the Challenger site, perhaps by purchasing and restoring vernal pools located on an adjacent site owned by San Diego County.

Vernal pools are shallow, seasonal depressions that provide habitat for rare species of animals and plants.❑

Base Reuse

Morris Newman

EPA Declares 15,000 Acres Free of Toxics

The U.S. Environmental Protection Service said on April 20 that 15,700 acres on closed military bases in the state are toxic-free and fit for development.

Specifically, the toxic-free lands on California bases includes about 10% of 2,777-acre Castle Air Force Base; about 25% of 5,073-acre George Air Fore Base; about 45% of the 5,716-acre Mather Air Force Base; and about 15% of the 2,127-acre Norton Air Force Base.

The EPA announcement seems an attempt to cheer up recession-plagued California with the news that substantial parts of closed military bases are available for development immediately, even though other parts are contaminated and may wait years, or even decades, for remediation. "At EPA, we look at this as a down payment for the citizens of California and their economic reuse of closed bases. It's a great step forward in getting these bases back to the community," said spokeswoman Paula Bruin in EPA's San Francisco office.

Wilson Base Reuse Report Gets Favorable Reaction

Local base-reuse officials on the whole seemed to like the recently released Report of the California Military Base Reuse Task Force to Gov. Pete Wilson. The report represents an attempt to identify consensus on base conversion statewide, as a step toward policy making. The report reflects the testimony of local officials in regional hearings held by the task force.

Chaired by San Diego Mayor Susan Golding, the task force outlined a series of proposals, including:

- treating military bases as "economic engines for job creation," leaving decision-making in the hands of local officials with active assistance from the state;
- providing "layered" financing from local, state and federal sources to bolster private capital;
- streamlining of regulatory processes, as well as speeding up the process of toxic remediation on former base sites; and
- getting the federal government to agree to a "smooth transition of base properties from Federal to local control."

Pete D'Errico, director of the Victor Valley Economic Development Authority, which is in charge of base conversion at George Air Force Base in San Bernardino County, described the report as a "worthy attempt." D'Errico added he was "delighted" that the final report seemed to echo his views on the need for community consensus.

Monterey County Supervisor Sam Karas, who has been active in the Fort Ord reuse process, also praised the report's stress on a single government agency to guide reuse. "The important thing in the report, which will help a lot of other areas, is setting a direction for a single governing entity," he said. "I think probably the most important thing about the report is the recommendation for an entity which is really in charge. It could save a lot of aggravation and disunity." Karas' remarks seem to reflect his experience at Fort Ord, where a long controversy has raged among rival groups seeking control of the conversion process. "We always learn from experience," Karas added.

Ben Williams, who coordinates base-reuse activities for the Governor's Office of Planning & Research, said local officials had told him the report was a "fairly comprehensive report, which is something we have not had very much of in the area of base closures."

Separately, Williams said he was lobbying for four bills that, in different ways, reflect the goals in the governor's report:

- AB 3769 (Weggland), which would allow local authorities to create redevelopment areas on former bases. The bill failed passage in early April in the Assembly Housing Committee.
- AB 3755 (Hunnicutt), which would establish a process to select a single reuse authority at future bases to be closed. The bill has passed out of the Assembly Consumer Protection Committee, and remains in committee.
- SB 1971 (Bergeson), which would streamline the environmental-review process at bases by allowing local officials to use federal environmental impact statements as the basis for state environmental impact reports; the federal document could be turned into a state document through supplements. The bill is currently in "spot" form and no hearings are scheduled.
- AB 3204 (Canella and McPherson), which incorporates an earlier bill, AB 3178, would preserve air-emission reduction credits on military bases. The bill attempts to prevent the loss of credits, which are required under EPA ozone-nonattainment rules. According to OPR's Williams, "credits are often simply lost because the military hasn't applied for them, or fail to reapply for them as they shut down." The bill is still in assembly committee.

Base Shorts

The San Diego Port Commission voted unanimously in late March to apply to the Pentagon for control of 120 acres of land and 55 acres of water of the 525-acre Naval Training Center, near Lindbergh Field. San Diego Mayor Susan Golding has criticized the move, while others described the move as a "hostile land grab," because the San Diego port board has apparently ignored an ongoing effort of officials to set up a process to decide future land uses on the naval facility. San Diego city officials also complained they were not notified about the impending commission vote, and some expressed surprise that the amount of property requested was a three-fold expansion of the amount of property in which the port commission had expressed interest last December....

The City of Adelanto made a final attempt on April 1 to block the Valley Economic Authority from signing a lease with the Air Force for 2,300 acres of George Air Force Base, by filing an injunction in Los Angeles Superior Court. Judge Diane Wayne granted a temporary restraining at that time, but on April 27, the judge denied the injunction. The suit had delayed a scheduled lease signing on April 7....

The Pentagon released $15 million in March for the purposes of creating a campus of California State University at Fort Ord. The money is to be used converting barracks to dormitories, classrooms and offices. About 800 students currently attending a satellite campus in Salinas are expected to move into the new campus in 1995. The state's chief legislative analyst, Elizabeth Hill, has been critical of the Fort Ord campus, noting a decline in attendance statewide in the system, as well as the facility's long distance from the communities it is intended to serve. ❑

CP&DR
LEGAL DIGEST

Takings Can Be Partial, Federal Circuit Says

Ruling Directs Claims Court Judge To Apply 'Balancing Test'

Ruling in an important Claims Court case, a federal appellate panel has concluded that a regulatory taking can occur when a property loses only part of its value and judges must apply a balancing test in determining the extent of the damages. The court specifically rejected settling a threshold.

Some property rights lawyers say the ruling by the U.S. Court of Appeals for the Federal Circuit in *Florida Rock Industries Inc v. U.S.*, 62 U.S.L.W. 2588, is an important next step in judicial thinking after the U.S. Supreme Court's ruling in *Lucas v. South Carolina Coastal Council*, 120 L.Ed. 798 (1992). Most legal experts, however, seem to agree that the rules in this area remain fuzzy. The case now returns to the U.S. Claims Court for the third time. The Claims Court has already found a taking twice in the case.

The *Florida Rock* case is one of two potentially important takings cases that have been bouncing around the Claims Court system. Both involve legal challenges to decisions by the Army Corps of Engineers' not to issue a wetlands "dredge-and-fill" permit under Section 404 of the Clean Water Act. The other case, *Loveladies Harbor Inc. v. U.S.*, is still pending before Federal Circuit. (Claims Court rulings in both cases were reported in *CP&DR*, September 1990.)

The Claims Court hears cases that involve claims against the U.S. government, and the Federal Circuit hears appeals of the Claims Court's rulings. Because it is a specialized court system, other members of the federal judiciary sometimes look to the Claims Court and the Federal Circuit for guidance on property takings questions. At the same time, however, practices and rules differ between the Federal Circuit and other federal Courts of Appeals such as the Ninth Circuit.

The *Florida Rock* case has had a long legal history, including two Claims Court rulings and two Federal Circuit rulings, leading property-rights attorney Michael Berger to dub the latest Federal Circuit ruling "Rocky 4." In 1985 the Claims Court awarded $1 million to Florida Rock, which hoped to mine limestone on a piece of Florida land but was rebuffed by the Army Corps. (*Florida Rock Indus. v. U.S.*, 8 Cl.Ct. 160., or *Florida Rock I*) The following year the Federal Circuit ruled that the Claims Court had erred in focusing on immediate use value rather than fair-market value in determining the value of the property after the taking. (*Florida Rock Indus. v. U.S.*, 791 F.2d 893, or *Florida Rock II.*)

On remand, the Claims Court ruled in 1990 that there had been a taking and reinstated the damages award. (*Florida Rock Indus. v. U.S.*, 21 Cl.Ct. 161, or *Florida Rock III.*) The U.S. government appealed, and on appeal a split Federal Circuit majority rejected the idea that a specific threshold of lost value must be established. Instead, the court said that two issues are at stake. First is the question of whether a regulation must destroy a certain proportion of a property's economic value in order for a taking to occur. Second is the question of how to determine what that proportion is.

While acknowledging that takings are, indeed, compensable under *First English Evangelical Lutheran Church of Glendale v. L.A. County*, 482 U.S. 304 (1987), the Federal Circuit also seemed to indicate that specific guidelines are not available and perhaps could not be dictated by a court. "What is necessary," the Federal Circuit wrote, "is a classic exercise of judicial balancing of competing values...(T)he trial court must determine whether the government acted in a responsible way, limiting the constraints on property ownership to those necessary to achieve the public purpose, and not allocating to some number of individuals, less than all, a burden that should be borne by all. Admittedly this is not a bright line, simply drawn."

Land-use lawyer Fred Bosselman of Chicago, who has been advising the state Resources Agency on takings implications of actions under the Endangered Species Act, said he did not believe the Federal Circuit had provided the trial court too much help on the remand. "They simply tossed it back to the trial court and said, 'Here's what the Supreme Court said, good luck'," Bosselman said.

Property-rights lawyer Michael Berger, who won the *First English* case, agreed that standards are still vague. But he said it was important that the federal circuit had determined that a taking can occur even if only part of the value of a property is lost. ❑

■ The Case:
Florida Rock Industries Inc. v. U.S. CA FC No. 91-5156 (3/10/94), 62 U.S.L.W. 2588.
Commentators:
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General Plan

Two Appellate Rulings Broaden Local Power to Deviate From Plans

Two recent appellate cases appear to give local governments more discretion to approve or reject development projects in spite of existing local plans. Though the local jurisdictions in each case came to different conclusions — one approving a project and one denying a project — the Court of Appeal affirmed the government agency's action in each case.

Both cases were recently ordered published — one by the appellate panel in question and the other by the state Supreme Court.

One case from Oakland affirms the city's duty to approve a high-density project called for in city plans even though the project appeared to conflict with some city policies about hillside construction. In its ruling, the First District Court of Appeal included a ringing endorsement of the general plan as a balancing of competing interests that should not be undone on a case-by-case basis.

And a case from Ventura County affirmed the county's right to reject commercial development in an exclusive subdivision even though the project complied with the city's general plan and zoning policies. The Second District Court of Appeal ruled that the county had identified sufficient traffic and safety issues to turn the project down.

The Oakland project involved a 10.5-acre hillside parcel zoned for high-density

development. The developer, WPN Associates, apparently sought to short-circuit potential problems by proposing a 46-unit project even though zoning on the property would have permitted 88 units. In 1991, the Oakland Planning Commission approved a 45-unit project, and the Oakland City Council upheld the decision. In its findings, the city council relied on Government Code §65589.5(j), which prohibits a local government from rejecting a project which complies with local general plans, zoning ordinances, and development policies unless public health or safety issues are involved.

The Sequoyah Hills Homeowners Association sued, claiming that the environmental impact report was inadequate and that the city had abused its discretion in not considering a lower-density alternative. Alameda County Superior Court Judge R. Marsh ruled in favor of the city, and Division 2 of the First District Court of Appeal affirmed.

The gist of the homeowners' complaint was that in the EIR and/or development review, the city should have considered a lower-density project that would have created less traffic in the area. The EIR included four alternatives: the required no-project alternative, a 63-unit alternative, a 36-unit plan, and a "mitigated" 45-unit plan, eventually adopted by the city, which modified the site plan significantly.

The homeowners argued that the EIR should have considered additional, lower-density alternatives, including site plans for 10 and 23 units. But the appellate court accepted the city's argument that even these alternatives would have created unmitigated visual impacts.

More important, the appellate court ruled that the city did not abuse its discretion in making a finding that the project was consistent with the Oakland City Plan. Some evidence in the record suggests that the project conflicts with some city policies, including one policy that says new housing should not "in general greatly exceed" existing densities, and another that encourages the maintenance of natural land forms. Writing for the First District, Justice Michael J. Phelan concluded that none of these policies is mandatory and a given project "need not be in perfect conformity with each and every OCP policy."

"A general plan must try to accommodate a wide range of competing interests — including those of developers, neighboring homeowners, prospective homebuyers, environmentalists, current and prospective business owners, jobseekers, taxpayers, and providers and recipients of all types of city-provided services — and to present a clear and comprehensive set of principles to guide development decisions," wrote Justice Phelan. "Once a general plan is in place, it is the province of elected officials to examine the specifics of the proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. It is, emphatically, not the role of the courts to micro-manage these development decisions."

The Ventura County case involved an attempt to win project approval for a commercial development on the last remaining commercial parcel in the gated Bell Canyon community, just west of the San Fernando Valley. The planning staff recommended approval of the project, which conformed to the general plan and the existing zoning. However, the planning commission rejected the project, making findings that the project would be detrimental to health and safety because of a hazardous traffic condition in the area. The property owner lost an appeal to the Board of Supervisors, as well as a hearing in front of Ventura County Superior Court Judge Richard D. Aldrich.

The Second District Court of Appeal, Division 6, affirmed Judge Aldrich's ruling. Comparing the case to *Guinnane v. San Francisco City Planning Cm.*, 209 Cal.App.3d 732 (1989), Presiding Justice Stephen Stone wrote: "Compliance with zoning laws does not necessarily entitle one to a permit...."

"In reviewing a proposed project, the administrative body is entitled to consider subjective matters such as the spiritual, physical, aesthetic and monetary effect the project may have on the surrounding neighborhood," he added. "...The denial of the instant PDP [planned development permit] is rationally related to preventing traffic congestion and to precluding further endangerment of children and equestrians at a dangerously curving spot along a roadway. ... The denial is also properly supported by the facts showing that the proposed commercial center would not maintain the character and integrity of the Bell Canyon community." ❑

■ The Case:
Seqouyah Hills Homeowners Association v. City of Oakland, No. A059689, 94 Daily Journal D.A.R. 3732 (March 24, 1994).

■ The Lawyers:
For Sequoyah Hills Homeowners Association: Joseph J. Kubancik, (510) 944-5550.
For City of Oakland: Mark Wald, Office of the City Attorney, (510) 238-3540.
For WDN Associates (Real Party in Interest): David Self, (510) 839-9455.
The Case:
Dore v. County of Ventura, No. B072081, 94 Daily Journal D.A.R. 3468 (March 18, 1994).

■ The Lawyers:
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DEVELOPMENT FEES

Lawsuit Over Traffic Fees Filed Too Late, Court of Appeals Rules

A San Ramon developer's challenge to traffic mitigation fees came too late to be valid, the First District Court of Appeal has ruled. In the ruling, the court concluded that the limitations period for challenging such mitigation fees begins at the time the fee is imposed, not the time it is paid.

The dispute arose when Ponderosa Homes attempted to sue San Ramon over traffic mitigation fees after a competing developer, Davidon Five Star Corp., had successfully lowered its own traffic fees through litigation.

In 1988, Ponderosa agreed to pay a traffic mitigation fee of $3,200 per unit as part of tentative subdivision map approval for a 452-unit residential development. At the time, the city had a split fee system. Developers in the Dougherty and Tassajara Valleys paid $3,200 per unit, as Ponderosa did, while developers elsewhere in the city paid $1,500 per unit.

In July of 1988 — three months after Ponderosa's tentative subdivision approval — the city replaced the split-fee system with a single citywide traffic fee of $2,177 per unit. Over the next year, Ponderosa received final subdivision approval for two phases of the project and did not object to paying the $3,200 fee.

In 1989, however, Davidon — which was developing a subdivision across the road from Ponderosa — sued San Ramon, claiming that the $3,200 fee for the Dougherty area was an illegal special tax and an unconstitutional taking. The following year, a Superior Court judge ruled in favor of Davidon, and the city settled with the developer for a mitigation fee of $2,177 per unit.

After the Davidon settlement, Ponderosa paid the $3,200 fee on additional phases of its project under protest, as permitted under Government Code §66020 and §66021. Ponderosa subsequently sued, alleging that the traffic fee was a special tax under Proposition 13, a taking of property without compensation, and a violation of Ponderosa's civil rights under the federal civil rights law (42 U.S.C. §1983). Ponderosa sought to have its past fees refunded because a "nexus" had not been proven and also sought a writ of mandate preventing imposition of the traffic fees.

In the Superior Court, both sides agreed that the limitations period for the state actions and the takings claim was 180 days, while the statute of limitations for the civil rights claim was one year. Judge John Van de Poel ruled, however, that the limitations period began running in 1988, when Ponderosa agreed to pay the fees as part of tentative subdivision approval. The First District Court of Appeal, Division Three, affirmed Van de Poel's ruling.

On appeal, Ponderosa argued that the statute of limitations was not triggered by the imposition of the fee in 1988, but by the actual payment of the fee by Ponderosa. Among other things, Ponderosa pointed to language in §66020 that distinguishes between "the time of approval or conditional approval of the development" and "the date of imposition" of the fee.

Writing for the appellate court, Justice Robert W. Merrill wrote: "There is a logical distinction between the act of imposing something and the act of complying with that which has been imposed." Merrill also rejected Ponderosa's argument about distinguishing between the time the project is approved and the date the fee is imposed. "Fees may be imposed — that is, required by authority of government — before or after tentative map approval," Merrill wrote. "In this case, the fee happened to be imposed at the same time as tentative subdivision map approval." ❑

■ The Case:
Ponderosa Homes Inc. v. City of San Ramon, No. A060955, 94 Daily Journal D.A.R. 4864 (April 13, 1994).

■ The Lawyers:
For Ponderosa Homes: Hugh L. Isola, (408) 286-5800.
For San Ramon: Byron Athan, City Attorney, (510) 829-3569.

GENERAL PLANS

Citizens Time Barred From Filing General Plan Suit, Court Says

In an unpublished opinion, the First District Court of Appeal has upheld approval of a development project in Contra Costa County, saying that citizen groups were time-barred from challenging the county's general plan six years after it was last amended.

The ruling revolved around Alamo Summit, a proposed development of 37 homes on 177 acres near the Las Trampas Regional Wilderness Area. Contra Costa County approved the rezoning and preliminary development plan for the project in 1990, and then approved the final development plan in late 1991 and early 1992. Both rounds of approvals drew lawsuits from citizen groups. In between the two rounds of approval, the county approved a new general plan — and the applicability of that general plan became a key issue in the litigation.

At the time of the original approvals, the county was still operating under its 1963 general plan, which had last been amended in 1985. After the initial approval in 1990, the county was sued by Alamo Citizens for Responsible Growth, which challenged the environmental impact report and also said the project was inconsistent with the open-space policies contained in the general plan. In fact, the Alamo Citizens argued that the 1963 plan was so out of date that a determination of consistency with it was impossible for the county to make.

In January of 1991, the county adopted a new general plan and moved to dismiss the Alamo Citizens case, claiming the suit had been rendered moot by passage of the new plan. The Alamo Citizens opposed the motion, arguing that the rezoning had been approved under the old plan and had not been considered under the new plan. In late 1991, a Superior Court judge ruled in favor of the county, concluding that the Alamo Summit rezoning was subject to — and consistent with — the 1991 plan.

Meanwhile, the developer applied for a final development plan and a vesting tentative subdivision map. The project was approved by the San Ramon Valley Regional Planning Commission in September of 1991. A different citizen group, the Alamo Improvement Association, appealed to the Board of Supervisors, but the board upheld the project in March of 1992. AIA subsequently sued, seeking to overturn this set of approvals. In late 1992 a Superior Court judge ruled in favor of the county.

Both citizen groups appealed their respective rulings, and the First District Court of Appeal consolidated the appeals. On appeal, the court ruled that the 1963 plan should apply to the project, not the 1991 plan. However the court also ruled that the Alamo Summit project is consistent with the 1963 plan, and that legal challenges to the 1963 plan are time-barred. In addition, the court found the county's environmental analysis to be adequate.

Perhaps the most important aspect of the ruling — even though it is unpublished — is the appellate court's finding that a direct challenge to the 1963 plan is time-barred. Government Code §65009 says that general-plan adequacy challenges must be brought within 120 days of adoption. The 1963 plan had last been amended by a housing element update in 1985. The citizen groups argued that they were not time-barred because they sought merely to question the adequacy of the general plan as it relates the Alamo Summit project approval, not to throw out the whole general plan.

The court, however, concluded that the citizen groups should not be permitted to make such narrow challenge to the general plan. "Even if a successful challenge only results in the invalidation of a particular project approval, rather than the invalidation of the general plan, developers will undoubtedly be reluctant to proceed with development plans that may be reviewed and approved under a general plan that has been declared legally suspect," wrote Justice J. Anthony Kline for the entire panel. "If we were to allow appellant to question the adequacy of the general plan years after its adoption or amendment, simply because a land use ordinance governed by the plan recently had been passed, we would completely undermine the legislature's stated objective" [of providing certainty].

Kline relied heavily on the Fourth District Court of Appeal's ruling in *Garat v. City of Riverside*, 2 Cal.App. 4th 259 (1991). In that case — an unsuccessful challenge to the City of Riverside's general plan — the Fourth District concluded that any action attacking a general plan on the ground of inadequacy must be brought in the context of a specific legislative action dealing with the general plan itself.

The Kline panel also found that the Alamo Summit project was consistent with the open-space provisions of the 1963 plan. The '63 plan called for concentrating development in areas approved for residential use and keeping areas designated as open space free from development. Approximately 60% of the Alamo Summit site was designated as general open space. Kline criticized the citizen groups' argument that the '63 plan required that no development be permitted on open space land. "Not only is such an interpretation unsupported by the language of the plan," he said, "but it would deny planning authorities the flexibility general plans are intended to incorporate."

The Court of Appeal also upheld the adequacy of a supplemental environmental impact report. In a lengthy discussion, the court concluded that the supplemental EIR had adequately provided alternatives to the project. The citizen groups argued that the document contained no alternatives that adequately addressed the issue of the project's visual impact.❑

■ The Case:
Alamo Citizens for Responsible Growth v. Board of Supervisors of Contra Costa County, Nos. A057414 and A060265 (January 31, 1994).

■ The Lawyers:
For citizen groups: Stewart Flashman, (510) 849-3263.
For Contra Costa County: Silvano Marchesi, County Counsel, (510) 646-2054.
For Alamo Summit Inc. (developer): Stephen Kostka, McCutcheon Doyle Brown & Enersen, (510) 937-8000.

VEHICLE CODE

L.A. Can't Close Public Streets To Put Up Gates, Appeal Court Says

An attempt to restrict access to a Hollywood hillside neighborhood has been shot down with caustic language by the Second District Court of Appeals.

In ruling that the City of Los Angeles does not have the power to close public streets to all outsiders, Justice Fred Woods of Division 7 warned against a breakdown in society by such "walling off" actions. "Although we understand the deep and abiding concern of the city and appellant with crime prevention and historic preservation, we doubt the Legislature wants to permit a return to feudal times with each suburb being a fiefdom to which other citizens of the State are denied their fundamental right of access to use public streets within those areas," he wrote. "If such action is necessary, then it should be expressly authorized by the Legislature."

The ruling, based on Vehicle Code §21101.6, is a blow to the Whitley Heights Civic Association, which had already erected seven gates in the neighborhood.

Whitley Heights is a 1920s neighborhood in the hills above Hollywood that includes both single-family homes and apartments, as well as many public streets and stairways that are still in use. The district is listed on the National Register of Historic Places. With the rise in crime in the Hollywood area, the Whitley Heights Civic Association asked the City of Los Angeles to permit the construction and use of gates in the single-family portion of the Whitley Heights neighborhood, excluding the apartment houses further down the hill. In 1985, the city council ordered the withdraw of the streets, walkways, and pathways from public use pursuant to Government Code §37359 and §37361, which authorize the withdrawal of government property from public use and the restriction of access to historic buildings. The city's action called on the Civic Association to build and operate the gates, but called upon the city to continue paying for maintenance.

In 1991, the Civic Association built seven gates at a cost of $350,000. Residents outside the gates organized as Citizens Against Gated Enclaves (CAGE) and sued, claiming that the city's action violated Vehicle Code §21101.6. That section, which codified *City of Lafayette v. Contra Costa County* (1979), 91 Cal.App.3d 749, prohibits cities from placing gates "or other selective devices" on public streets if those devices "restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street." The Civic Association argued that this law had not been violated because it was the Civic Association, not the city, that had built the gates and intended to operate them. The Civic Association also argued that the streets inside the gates were not streets as defined in the Vehicle Code because they were closed to the public.

L.A. County Superior Court Judge Robert H. O'Brien ruled in favor of CAGE's motion for summary judgment. (*CP&DR*, March 1993.) The Civic Association appealed to the Second District, Division 7, which unanimously affirmed O'Brien's ruling.

Writing for the court, Justice Fred Woods took the city to task in no uncertain terms. "A city can still vacate or abandon a street upon a finding that the property in question is unnecessary for present or future uses as a street," he wrote. "What the city cannot do is wave a magic wand and declare a public street to be not a public street." He said that a public street as defined in the Vehicle Code is a street that is not only open to public use but also one that is publicly maintained. He noted that the Whitley Heights streets failed this test because they are maintained by the city and also because the city remains liable for injuries.

"If the streets are still 'public,' it makes no sense to classify them as public when it comes to the expenditure of public funds but classify them as private when it comes to public use," Woods wrote. "Appellant [Whitley Heights Civic Association] cannot have it both ways." ❑

- The Case:
  Citizens Against Gated Enclaves v. Whitley Heights Civic Association, No. B077760, 94 Daily Journal D.A.R. 3832.
- The Lawyers:
  For CAGE: Leon Dayan, Hall & Phillips, (310) 441-8300.
  For Whitley Heights Civic Association: David Faustman, Latham & Watkins, (213) 485-1234.

CONDITIONAL USE PERMITS

L.A. May Impose Conditions On Reopening of Liquor Stores

The reopening of liquor stores destroyed in the 1992 Los Angeles civil unrest may be subject to discretionary review by the city's planning commission, the Second District Court of Appeal has ruled.

Writing for a unanimous panel, Presiding Justice Mildred Lillie of the Second District's Division 7 concluded that neither the state's Alcohol and Beverage Control Act (Bus. & Prof. Code §23000 *et seq.*) nor the state constitution pre-empts the city's power to impose conditions on the liquor stores.

"The effect of the conditions imposed under the ordinance is to reduce or eliminate the nuisance activities these businesses tend to attract," Justice Lillie wrote. "That the conditions imposed under the ordinance may have some indirect impact on the sale of alcoholic beverages does not transmute the purpose and scope of the ordinance into a regulation merely seeking to control alcohol sales."

L.A. began requiring conditional use permits for off-site liquor sales citywide beginning in 1985. In 1987, the city drew up a specific plan requiring a special conditional-use process for liquor stores in the South-Central areas. Existing liquor stores were "grandfathered in."

During the 1992 riots, many of the "grandfathered" businesses were forced to close because of riot damage. Under pressure from community groups in South-Central, the city required these pre-existing liquor stores to undergo a discretionary approval process similar to a CUP application. At a planning commission hearing, the liquor store owners were required to remove graffiti promptly, provide adequate lighting, have a security guard, and sometimes limit their hours of operation. L.A. has also instituted a number of "revocation" hearings to revoke or condition the "grandfathered" provisions if the business had become a nuisance.

Several individual liquor stores sued, as did the Korean American Legal Advocacy Foundation, arguing that process amounted to an unconstitutional ban on alcohol sale, as well as an infringement on the powers of the Alcohol and Beverage Control Board. But L.A. Superior Court Justice Robert H. O'Brien upheld the process and denied a preliminary injunction. The appellate court affirmed O'Brien's ruling.

Both the state constitution and the ABC law pre-empt attempts to regulate the sale of alcohol. But Lillie distinguished between attempts to restrict the sale of alcohol and attempts to minimize problems associated with liquor sales. "Despite the plaintiffs' arguments to the contrary, the purpose of the effect of the city's ordinance is not to dictate, restrict, or regulate the actual sale of alcoholic beverages," she wrote. "Instead, the focus of the ordinance is to abate or eradicate nuisance activities in a particular geographical area by imposing conditions aimed at mitigating those effects. These are typical and natural goals of zoning and land use regulations."

Lillie also concluded that the ABC law does not pre-empt local land-use powers, noting that the law "expressly allows local governments to enact supplementary legislation directed at zoning or land use."

Lillie also concluded that the "grandfathered" businesses were not immune from compliance with the city's law under exemptions contained in §23790 of the Business and Professional Code. These exemptions apply to situations where an "act of God" or "toxic accident" has occurred. "Because the civil disturbance and resulting destruction of businesses involved affirmative willful or accidental acts of human beings, the 'act of god' exception is not applicable," Lillie wrote. She also concluded that because toxic accidents were singled out by the legislature for exemption, then no other "human" activities were meant to be covered by the exemption.

The court also dismissed the appeal of the injunction denial as moot. ❑

- The Case:
  Korean American Legal Advocacy Foundation v. City of Los Angeles, Nos. B077272 and B079224, 94 Daily Journal D.A.R. 3558.
- The Lawyers:
  For Korean American Legal Advocacy Foundation: Stephen L. Jones, (213) 488-7180.
  For City of Los Angeles: Gwendolyn Ryder Poindexter, Deputy City Attorney, (213) 485-4511.
  For Community Coalition (Intervenor): Paul E. Lee, Legal Aid Foundation of Los Angeles, (213) 487-3320.

DEVELOPMENT FEES

Injunction Denied In Challenge To Tahoe Water Quality Fees

Property owners in the Lake Tahoe area should not be able to obtain a preliminary injunction blocking two regional agencies from assessing water quality mitigation fees, the Third District Court of Appeal in Sacramento has ruled.

In making the ruling, the Third District concluded that the Tahoe Keys Property Owners' Association is unlikely to prevail in the underlying litigation. In the lawsuit, the Tahoe Keys owners seek to prohibit the California Tahoe Regional Planning Agency and the Regional Water Quality Control Board from imposing $4,000-per-unit fees on new construction. The suit also seeks a refund of all fees imposed since the fee structure took effect in 1982.

The case involves 26 subdivisions along Lake Tahoe in the Tahoe Keys, which were created from the Truckee Marsh by extensive dredge-and-fill operations. In 1982 — after most of the property had been developed — California TRPA and the regional water board agreed to permit further development only if the $4,000 fee were imposed. The intent of the fee was to fund water quality improvement in the lake that would be approximately equal to the degradation of water quality created by the Keys.

Between 1982 and 1991, 300 Keys building permits were pulled, and the mitigation fund grew to $1.5 million. No money was expended from the fund to improve water quality. In 1991 the Keys property owners filed a takings lawsuit, demanding that past mitigation fees be refunded and that no such fee be imposed on future construction. El Dorado Superior Court Judge J. Hilary Cook denied the Keys property owners' request for a preliminary injunction, and the property owners appealed.

On appeal, the Keys owners claimed that a preliminary injunction was required because property owners would be forced to pay an unconstitutional fee, at least temporarily. Writing for the unanimous three-justice panel, Acting Presiding Justice Keith F. Sparks concluded that there would be no irreparable injury to the Keys property owners if further fees were collected. However, Keys wrote, if an injunction were issued blocking collection of further fees "we find significant potential harm to the defendants." If California TRPA and the regional water board eventually won the case, they would have to try to collect the fees from the individual property owners, not from the association.

In rejecting the injunction, Sparks also concluded that the property owners were not likely to prevail at trial on the constitutional issues. "There has been no physical invasion of plaintiff's property nor is there any suggestion that landowners have been deprived of all economically beneficial and productive use of the land," Sparks wrote. In addition, he rejected the property owners' argument that the fee should apply to everyone in the area, not just the Keys property owners. "We perceive no reason in the record to doubt that landowners in the area, such as TKPOA and its members, will benefit specially," Sparks wrote. "After all, they are not simply transient visitors but plan to live there or at least have a concrete investment in the area. ... Land use regulations often have differing effects on neighboring properties and this fact alone does not invalidate a regulatory scheme." ❑

- The Case:
  Tahoe Keys Property Owners Association v. State Water Quality Control Board, No. C012562, 94 Daily Journal D.A.R. 4345 (April X, 1994).
- The Lawyers:
  For Tahoe Keys Property Owners Association: Lewis Feldman, Feldman Shaw Devore, (916) 544-3731.
  For State Water Quality Control Board: Daniel L. Siegel, Deputy Attorney General, (916) 323-9259.

LEGAL FYI

The state Supreme Court has accepted a property owner's challenge to Napa County's initiative requiring voter approval for general plan amendments dealing with agricultural land use. But because Gov. Pete Wilson has not named a replacement for retiring Justice Edward Panelli, the court has been moving slowly and already has several other pending land use cases. *DeVita v. County of Napa, Supreme Court* No. S037642. (*CP&DR* Legal Digest, January 1994)...

Meanwhile, the U.S. Supreme Court has declined to hear two land-use cases from California, meaning that appellate rulings will stand...

The court has refused to reinstate *Moerman v. California*, 93-1171, in which a property owner alleged a taking of property by physical occupation because endangered tule elk, relocated to his area by the Department of Fish & Game, caused damage to his land. The California Court of Appeal rejected the claim. (*CP&DR Legal Digest*, November 1993.)...

The court also declined to take *Los Angeles v. Topanga Press*, 93-1013, a case in which the federal courts in California imposed a preliminary injunction against the City of L.A. for a supposedly restrictive adult zoning ordinance. It's the latest turn in a growing legal debate over the constitutional limits of adult zoning. The 9th Circuit upheld the injunction last year (*CP&DR Legal Digest*, April 1993)....

In a somewhat similar case, the Ninth U.S. Circuit Court of Appeals has granted a rehearing in *Nevada Entertainment Industries v. Henderson*, a case challenging the adult zoning ordinances in a Las Vegas suburb. The 9th Circuit has vacated the original ruling, reported at 8 F.3d 1348 (*CPDR Legal Digest*, December 1993)....

The Ninth Circuit has also issued several other important land-use rulings of late. In a case challenging San Francisco's ordinance restricting the conversion of residential hotels to tourist use, a Ninth Circuit panel ruled that the city of San Francisco may file an amended motion for summary judgment based on changed case law in the circuit. The case is important because District Court Judge John P. Vukasin Jr. found an unconstitutional taking last year. *Golden Gate Hotel Association v. City and County of San Francisco*, Nos. 93-16713, 93-16714, and 93-16784, 94 Daily Journal D.A.R. 3544... ❑

Riordan Proposes Reorganization of L.A. Redevelopment

Continued from page 1

Further, consolidation offers the attractive idea of bringing all the city's economic development powers under a single roof — a strategy that falls in line with Riordan's vow to concentrate on economic development, in contrast to the Bradley administration's emphasis on large-scale real estate and infrastructure projects.

In his budget message, the mayor announced he would turn the CRA — formerly a quasi-independent agency with its own budget — into a general-fund agency. He said this move would make the new agency into a "single, integrated agency, with no part isolated from city oversight" — an apparent dig at the traditional independence of the CRA board from the city council. He further added that the combined agency would offer a "focused, comprehensive strategy for producing housing, commercial, industrial and business development."

Deputy Mayor Rae James, in an interview, echoed the need for coordination. "We did not, as a city, have a development strategy," said James, who oversees all community development activities. "Our growth was sort of haphazard." And while the mayor's budget does not mention a favorite Riordan topic — the decentralization of city services into many "little city halls" — James said she supported the idea and would advocate it in the months ahead.

Riordan's aides refused to say they have killed the CRA. At a press briefing on the budget, William McCarley, Riordan's chief of staff, said that, "contrary to expectations, under my shirt is not a T-shirt that says, 'CRA Go Away'." Yet it is hard to avoid the conclusion that the CRA's role will be diminished. Unlike his predecessor, Riordan has addressed the problem of economic development in general, citywide terms, rather than focusing attention on specific areas where redevelopment could be deployed (such as downtown, Hollywood and Watts.)

Riordan has already asked for the current CRA board to resign, although he did not set a date when they should do so. His proposal for a new Community Development Commission is a notable departure from his attempt to keep most other city commissions in place. And Riordan's emphasis on job creation and affordable housing suggests that he will emphasize smallscale efforts rather than the CRA's traditionally large-scale projects. One City Hall insider called Riordan's realignment of the CRA "a gracious way to declare victory and call the troops home from the old-style redevelopment wars."

The CRA board, for its part, seemed hard at work to tie up loose ends. On April 21, in a single session, the board resolved its differences with developer Alexander Haagen, who had attempted to cut the city out of financial participation in the Crenshaw Plaza Mall, a redevelopment project (*CP&DR*, April 1994) and approved the Downtown Strategic Plan, an advisory document born of a consensus-planning effort of Downtown developers, business owners and city officials.

Gary Squier, director of the city's 270-employee Housing Dept., did not sound distraught at the notion of losing his independence to the Citywide Development Agency. "It's a big change for housing, but we'll survive," he said. Squier observed that his $80 million budget would change little, and that the new organization exempted him from civil-service restrictions on hiring outside the ranks of City Hall employees, giving him greater leeway to hire outside consultants. He said he was pleased that his staff would not be affected by layoffs. (The mayor plans to eliminate 700 city jobs in other agencies in the coming year through attrition.)

The biggest question facing the mayor's plans for the redevelopment and housing agencies is council approval. At least two council members — Mark Ridley-Thomas and Richard Alarcon — have expressed reservations about the potential loss of community input in a centralized agency. The new agency also promises to loosen the grip that the council exerted on the CRA two years ago, when Councilman Zev Yaroslavsky led a "revolt" against the agency to gain greater oversight.

■ Contacts::
Rae James, deputy mayor, (213) 485-3331.
Stanley Hirsch, Chairman, Los Angeles Community Redevelopment Agency, (213) 977-1600.
Gary Squier, director, Los Angeles Housing Dept., (213) 485-1907.

Sales Tax Sharing Bill Dropped in Legislature

Continued from page 1

governments to school districts in the last two years. On March 30, the Second District Court of Appeal ruled that Los Angeles County challenge the constitutionality of this property tax shift because the field of property tax allocation is occupied by state legislation. (*County of Los Angeles v. Sasaki*, No. B077722, 94 Daily Journal D.A.R. 4209.)

Currently, local sales tax revenues are distributed to cities and counties based on the location where retail sales takes place, creating competition for retail outlets. Brown's bill would have retained that formula for current sales tax revenues. Half of future revenues would have been allocated on a *per-capita* basis. The other half would have been allocated to cities that are "sales-tax-poor."

Brown's bill deeply divided local government officials. County lobbyists pushed hard for the bill, while city lobbyists bitterly opposed it. In supporting the bill, the California State Association of Counties said it would "encourage a more balanced approach to development and eliminate some of the incentive for destructive competition among jurisdictions for retail outlets."

Cities, however, lobbied hard against the bill, saying it would reduce the incentive for local governments to accept commercial development that local residents might oppose. Other opponents of the bill argued that it might lead to more suburban sprawl, as counties could accept tax-poor housing development without paying a financial "penalty" for it. The bill was opposed by the League of California Cities and more than 40 individual cities.

League lobbyist Dwight Stenbakken agreed that the issue needed to be dealt with more broadly. "I don't think you can sit and talk about sales tax in the absence of other issues," he said.

Contacts:
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Carol Whiteside, Director of Intergovernmental Relations, Governor's Office, (916) 323-5446.
Dwight Stenbakken, lobbyist, League of California Cities, (916) 444-5790.

NUMBERS

Stephen Svete

Have the Voters Had Enough of Bonds?

You can tell it's a major election year in California by the proliferation of bond measures on the June ballot. Just how well the four potential beneficiaries — public schools, universities, highways, and open space — will fare is anybody's guess. Because although the voters have generally supported bond financing over the last decade, especially for schools, their steadfastness has waned in recent years.

The four bond issues on the ballot next month total nearly $6 billion — $1 billion for public schools (K-12), $900 million for public universities, $2 billion for quake repairs and retrofits on highways and bridges, and a $2 billion citizen initiative for open space and park acquisition (the so-called CALPAW initiative). State bonds are politically attractive because, unlike local bond issues, they don't involve a tax increase. (State bonds are paid back out of the state's general fund.) But voters understand that nothing is free, and during the recession they've been noticeably reluctant to support bonds.

The turnaround became clear in November of 1990, when the recession was first hitting hard. In the June 1990 state ballot, voters approved seven out of seven bond issues. But in November of that year, voters were faced with 14 bond measures and rejected 12. Since then only five bonds have been offered on the ballot, and only three have passed.

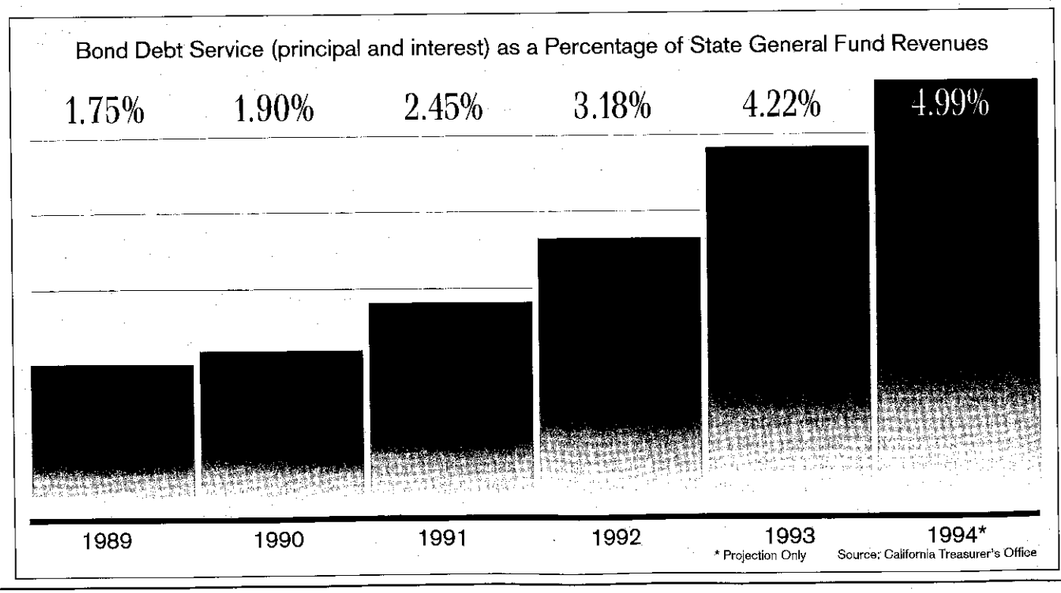
Given this 26% pass rate since November 1990, it seems unlikely that all four bonds on the June ballot will succeed. And it may well be that schools end up short this time. School bonds have continued to pass throughout the recession, but the rates of passage have become razor-thin. The last two school bonds — on the June and November 1992 ballots — received only 53.1% and 51.9% respectively.

Complicating the bond situation in 1994 is this year's hot-button issue: earthquake relief. In March, Gov. Pete Wilson and the Legislature agreed to double the amount of the earthquake bond from $1 billion to $2 billion. The bond was attractive to Wilson in an election year because it allowed him to support earthquake recovery and oppose new taxes. (Many earthquake relief operations in the past have been financed by a temporary sales-tax increase.)

Such politically safe decision-making has a price — and that price will be paid by the next generation of taxpayers. The fact is that debt service on bond issues has tripled in the last six years. In 1989, debt service was only 1.75% of the state's expenditures. By 1993, that figure had risen to 4.22%, and it's expected to jump to almost 5% by the end of the current fiscal year.

So how will the competing concerns of the schools, roads, and open space play against the backdrop of a mortgaged fiscal future for our children? That's difficult to say, says Gerry Meral, executive director of the Planning & Conservation League, which sponsored the CALPAW initiative. "I don't believe that the voters will pay attention to detailed information about debt service as an annual expenditure," he said in an interview. "But there's no question that voters are worried about debt — not just the state's, but the federal government's as well. And voters are making priority decisions about different initiatives."

It's become clear that the state of the budget — and the economy as a whole — will factor into voters' decisions in June. And regardless of which bonds pass or fail, the pricetag for the politically easy solution of bond financing will be around long after election day. ❑



DEALS

Morris Newman

The Transit-Oriented Development That Works

Every cook has experienced this quandary: a dish that is tossed together out of bits and pieces turns out to be a triumph. The problem is how to replicate the success. Wherein did it lie? The ingredients? The temperature of the oven? The gravitational force of the moon on a certain day? What, in short, was the *sina qua none* that led to the successful dish?

A similar quandary might be facing BART officials regarding the Pleasant Hill BART Station. Located just outside the City of Pleasant Hill in unincorporated Contra Costa County, the station is "the best example we have so far of transit-based development," according to BART board member Mike Bernick. Indeed, the Pleasant Hill station is one of those rarities in planning: the project that develops according to plan. Starting from scratch in the mid 1980s, BART and Contra Costa County created *ex nihilo* a commercial center where the office space is fully leased and the housing is fully occupied, and, where, most importantly, transit ridership among local residents has matched or exceeded expectations. Moreover, the public agencies in charge of the effort were able to achieve all of these results without using the traditional powers of redevelopment, such as land writedowns or other subsidies. Today, the reason for the success of the Pleasant Hill BART Station is not an idle question to other stations in the BART area, where similar "transit villages" are being developed, as well in Sacramento, Los Angeles and San Diego, where the concept of "transit-oriented development" is just getting started.

> *"The Pleasant Hill station is one of those rarities in planning: the project develops according to plan"*

Pleasant Hill was not an instant success, however. Although BART had obtained entitlements to build 1.25 million square feet of commercial space on its 11-acre property in Pleasant Hill in the 1970s, "absolutely nothing happened," recalled Jim Kennedy, director of the Contra Costa County Redevelopment Agency. The location was conveniently located off a freeway entrance to I-680, but developers individually seemed unwilling to shoulder some of the infrastructure costs, such as widening the arterial road between the station and the freeway. In 1986-7, one tentative project fell apart, when the changes in the federal tax code made the project unattractive to the developers.

Then Contra Costa County entered the picture. In a cooperative planning process that involved BART, Pleasant Hill and the neighboring City of Walnut Creek, the county formed a 125-acre redevelopment area surrounding the BART station, and created a specific plan with roughly the same boundaries. Both the redevelopment area and the specific plan promoted development in ways that were impossible for BART which, as a transit agency, is barred from buying land expressly for the purpose of development. The plan called for 3 million square feet of commercial space and 2,000 residential units. The redevelopment agency found a way to handle infrastructure costs by requiring up-front fees from developers to participate in an assessment district; by 1988 the redevelopment agency had gathered $4.5 million from developers, which was parleyed into bond sales of about $30 million, to pay for the road widening and traffic mitigations, as well as a new day-care center as an amenity to employees of the office buildings.

The biggest controversy surrounding the Pleasant Hill station occurred in 1988, when BART officials had proposed large-scale retail development on top of the BART station. BART officials said the development is permitted under the specific plan, but Walnut Creek said it was not, and sued the county over the retail proposal. BART officials claimed the city was trying to protect its own merchants in downtown Walnut Creek, but city attorney Thomas Haas (who took office after the lawsuit) said that the real issue was the potential traffic through the city's surface streets generated by "destination retail" at the BART station. "The city had no quarrel with retail that served residents in the immediate area. But if they were to turn this area into a major shopping center that nobody has planned for, that would overburden the infrastructure and would be a very grave concern of ours," Haas said. Shortly after, the city and the county agreed on a settlement allowing 100,000 square feet of retail development in the station area, while any additional development would trigger a lawsuit.

In the 1990s, recession brought the fast pace of development at Pleasant Hill to a halt, as it did everywhere else in California, but the real estate statistics are still impressive. More than 1 million square feet of office space has been completed, and has a vacancy rate of 5%, possibly the lowest in California. About 1,800 units of housing were built under the plan and are full. Of people who live within the specific plan area, 40% ride BART to outside destinations, while 10% of incoming, day-time employees use the train system. As it turns out, virtually all the development in the specific plan area has been built by the private sector; although the BART site has the densest entitlements, the transit authority has never been able to strike a successful deal with a developer. (One observer speculated that BART has placed too high a rent on the land.)

Pleasant Hill is an important precedent, because it demonstrates that transit-oriented development can be successful both in real estate terms and in transit ridership. Whether such success can be replicated at will is uncertain, however. To be sure, BART and Contra Costa County did everything right: They chose a good location near a major freeway offramp. They created a plan that was attractive to developers. Beyond that point, however, luck, not planning, provided the other essential ingredient to this recipe: timing. The station entered the real estate market in the late 1980s, when Bay Area suburbs were growing rapidly; the Walnut Creek/Pleasant Hill area in particular became one of the hottest markets. The astrological conjunction between good planning and a good real estate market is rare. We know all the ingredients for success; the problem is you can't buy all those ingredients — particularly a trendy location in a booming market — at the corner grocer. ❑